

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FRANKLYN WILLIAMS,)	
)	CASE NO. 1:21CV1301
Petitioner,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
OHIO DEPARTMENT OF)	
REHABILITATION AND)	
CORRECTIONS,)	
)	ORDER
Respondent.)	[Resolving ECF No. 21]

Pending in this [28 U.S.C. § 2254](#) habeas proceeding is Petitioner's Motion for Reconsideration and an Extension of Time to File Objection to the Magistrate [Judge's] Report & Recommendation ([ECF No. 21](#)), filed on April 2, 2024.¹

Counsel for Petitioner declares:

Now comes the Petitioner Franklyn Williams, (hereinafter referred to as Petitioner and/or Williams), by and through undersigned counsel and hereby respectfully requests this Honorable Court to Reconsider this Court's recent ruling of March 29, 2024 (sic) adopting the Magistrate [Judge's] Report and Recommendation as undersigned counsel never received the Magistrate [Judge's] Report and Recommendation therefore, counsel could not timely object to the Magistrate [Judge's] Report and Recommendation on behalf of his client Williams. This Honorable Court acknowledged that the failure to object to the Magistrate [Judge's] Report and Recommendation by Petitioner and/or Respondent was the basis for its adoption of the Magistrate [Judge's] Report and

¹ Lawrence R. Floyd, Petitioner's counsel, misidentifies Magistrate Judge Jennifer Dowdell Armstrong as the "Magistrate." The title magistrate no longer exists in the U.S. Courts, having been changed from "magistrate" to "magistrate judge" in 1990. Judicial Improvements Act of 1990, 104 Stat. 5089, [Pub. L. No. 101-650](#), § 321 (1990) ("After the enactment of this Act, each United States magistrate . . . shall be known as a United States magistrate judge.").

Recommendation. Counsel would have fulfilled his adversarial role on behalf of his client as the Petitioner's case is of a very serious nature with a lengthy sentence imposed upon him.

WHEREFORE, Petitioner Franklyn Williams prays that this Honorable Court will reconsider its recent judgment especially considering the unfortunate circumstances of not receiving a copy of the Magistrate [Judge's] Report and Recommendation to review for possible objections. Counsel is in need of a copy of the Magistrate [Judge's] Report and Recommendation and an extension of time to review the document and if need be, file an objection to this Honorable Court in the interest of fairness. Petitioner prays that this Honorable Court grant the relief sought herein in the interest of law, justice, equity and good conscience.

[ECF No. 21 at PageID #: 2154-55](#). Counsel for Petitioner, however, does not state whether he monitored the electronic docketing system directly in order to check the case at bar for new filings. Unbelievably, Attorney Floyd also states he "is in need of a copy of the Magistrate [Judge's] Report and Recommendation" even though he has access to it in the Case Management/Electronic Case Filing System (CM/ECF) of the United States District Court for the Northern District of Ohio.

On March 12, 2024, Magistrate Judge Armstrong issued a Report & Recommendation ([ECF No. 18](#)). A copy of [ECF No. 18](#) was served by the Clerk of Court upon counsel of record, including Attorney Floyd, at their respective email addresses via the Court's CM/ECF System. On March 27, 2024, the Report & Recommendation of the magistrate judge was adopted without objection, and Franklyn Williams's Petition for a Writ of Habeas Corpus was dismissed. *See* Memorandum of Opinion and Order ([ECF No. 19](#)) and Order of Dismissal ([ECF No. 20](#)).

The Court's electronic filing system shows that counsel was successfully emailed a notice of the issuance of [ECF No. 18](#). The undersigned checked with the Clerk of Court to ascertain whether the Notice of Electronic Filing ("NEF") for [ECF No. 18](#) bounced back from Attorney Floyd's email account (lfloyd24@roadrunner.com) on March 12, 2024. A close review

of the database reveals that the NEF for [ECF No. 18](#) was sent out correctly by the Court's CM/ECF System and the NEF did not bounce back from Attorney Floyd's email account. In the CENTS system used by the Clerk of Court for tracking emails, we can see the receipt of the following message:

Back Select Recipient Name: Ifloyd24@roadrunner.com - 1010 [Start a New Search](#)

Envelope and Header Information

Sender: ohndecf@ohnd.uscourts.gov
Recipients: Ifloyd24@roadrunner.com
Subject: Activity in Case 1:21-cv-01301-BYP Williams v. Ohio Department of Rehabilitation & Corrections Report and Recommendation
Message-ID Header: 11328347@ohnd.uscourts.gov
Message Size: 3.89 (KB)
Ironport Host: 156.119.195.21
Message Timestamp: 03/12/24 08:38:48 -07
Sending Host IP Address: 156.119.190.31

Message Delivery Information

03/12/24 08:38:49 -07 Message Successfully delivered to Ifloyd24@roadrunner.com at 47.43.26.7. Response '2.0.0 k1P6r5DQPAJJOk1P6rAPcK mail accepted for delivery'

The Message-ID Header is 11328347. If we then look at the NEF attached to [ECF No. 18](#) in CMECF we see the following (other email addresses sanitized for security):

```
MIME-Version:1.0
From:ohndecf@ohnd.uscourts.gov
To:OHNDdb_CleECF@ohnd.uscourts.gov
Bcc:
--Case Participants: Lawrence R. Floyd (lfloyd24@roadrunner.com), William H. Lamb
[REDACTED], Magistrate Judge Jennifer
Dowdell Armstrong [REDACTED]
--Non Case Participants: Ralph Michael Hink [REDACTED]
--No Notice Sent:

Message-Id:<11328347@ohnd.uscourts.gov>
Subject:Activity in Case 1:21-cv-01301-BYP Williams v. Ohio Department of Rehabilitation &
Corrections Report and Recommendation
Content-Type: text/html
```

with Message-Id: 11328347.

Counsel previously consented to receiving notice of filings pursuant to [Fed. R. Civ. P. 5\(b\) and 77\(d\)](#) via the Court's electronic filing system. Attorney Floyd's email address has not changed during the pendency of the case at bar. See [Tri-Corner Invs. LLC v. First Defense Int'l](#)

Grp., Inc., 361 Fed.Appx. 629, 632 (6th Cir. 2010) (affirming a district court's denial of a Rule 60(b) motion for relief from the entry of a default judgment when the movant's failure to answer the complaint was due to its failure to read mail sent to a company drop box in a timely manner); Lomax v. LaRose, No. 1:13CV2801, 2018 WL 10550319 (N.D. Ohio Nov. 14, 2018) (denying petitioner's motion for relief from judgment in a § 2254 habeas case when his counsel asserted that he did not receive notification that the court had made a ruling).

Accordingly, Petitioner's Motion for Reconsideration and an Extension of Time to File Objection to the Magistrate [Judge's] Report & Recommendation (ECF No. 21) is denied. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

April 5, 2024
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge